

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

vs.

03-CR-64

RAFIL DHAFIR,

Defendant.

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Transcript of a Sentencing held on
October 27, 2005, at the James Hanley Federal
Building, 100 South Clinton Street, Syracuse,
New York, the HONORABLE NORMAN A. MORDUE, United
States District Judge, Presiding.

A P P E A R A N C E S

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1 (Open Court, 10:13 a.m.)

2 THE COURT: Please be seated. Will the clerk
3 please call the case, have counsel note their appearances.

4 THE CLERK: Court calls United States of
5 America versus Rafil Dhafir, Case Number 5:2003-CR-064.

6 MR. OLMSTED: For the United States, Mike
7 Olmsted, Steve Green, and Greg West, your Honor.

8 THE COURT: Good morning, Counsel.

9 MR. OLMSTED: Morning, Judge.

10 MR. CANNICK: For Dr. Dhafir, Deveraux Cannick
11 for Dr. Dhafir.

12 THE COURT: Morning, Mr. Cannick.

13 MR. COHEN: Appearing on behalf of Dr. Dhafir,
14 Joel Cohen.

15 MR. GAYNOR: Philip Gaynor for Dr. Dhafir,
16 good morning.

17 THE COURT: This matter is on this morning for
18 purposes of sentencing. Do counsel have the presentence
19 report dated May the 17th, 2005, revised on August the 23rd,
20 2005, addendum dated August 24th, 2005, the first addendum
21 dated September the 14th, 2005, and the second addendum dated
22 October 21st, 2005?

23 MR. OLMSTED: We have all of those documents,
24 your Honor.

25 MR. CANNICK: We do, your Honor.

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1 THE COURT: Share it with your client?

2 MR. CANNICK: Yes, your Honor.

3 THE COURT: All right. In addition to the
4 presentence report, I received 41 letters regarding the
5 sentencing of the defendant, and also I was mindful of the 69
6 letters I did receive for bail during the bail application
7 proceedings during this matter.

8 Now do counsel have any objections to the
9 facts as stated in the presentence report?

10 MR. OLMSTED: None from the Government as it
11 is currently amended.

12 THE COURT: As of this time. Mr. --

13 MR. CANNICK: Your Honor, there were facts
14 that we objected to initially and some of those were resolved
15 and the others that we could not resolve, we just have them
16 there for the record, probation has them.

17 THE COURT: Thank you, sir. Are there any
18 objections to offense level calculations as reflected in the
19 presentence report?

20 MR. OLMSTED: As reflected in the latest
21 addendum to the presentence report that was filed after the
22 Court's order of August 31st, we have no objection.

23 THE COURT: Okay. Mr. Cannick, I'm sure you
24 have an exception to the order.

25 MR. CANNICK: Absolutely, your Honor. And

1 your Honor, well, maybe I'm getting ahead of the Court, so
2 I'll just wait.

3 THE COURT: All right. Lastly, do you agree
4 with the criminal history computation that is set forth,
5 criminal history category I?

6 MR. OLMSTED: The Government does, your Honor.

7 THE COURT: I'm sure you do.

8 MR. CANNICK: Yes, your Honor.

9 THE COURT: All right. In that case, I'm
10 ready to hear arguments for downward departures.

11 MR. CANNICK: Your Honor, before we go to
12 downward departure, I said I had something with respect to
13 the guideline calculations.

14 THE COURT: Yes, sir.

15 MR. CANNICK: That I thought were two issues
16 that were still remaining. One is the enhancement with
17 respect to national security, and the other was the abuse of
18 trust enhancement. The abuse of trust, your Honor, we have
19 objection to that and I think we articulated that in our
20 overall papers. But we would like to speak more directly to
21 the enhancement with respect to national security.

22 THE COURT: That was the enhancement on
23 2S1.1(b)(1) of the Guidelines.

24 MR. CANNICK: Yes, your Honor.

25 THE COURT: Go ahead, sir.

1 MR. CANNICK: Your Honor, I think that if the
2 Court is relying upon the documents that were provided to it
3 by the Government, I think that reliance would be wholly
4 misplaced. I think that it's a situation wherein the
5 Government in its papers made reference to the Court could
6 either rely on the testimony that was adduced at trial or it
7 could rely on the documents itself. In our correspondence to
8 the Court dated October 4th, 2005, we pointed out that the
9 documentation that the Government was relying on, these were
10 notes that were taken by Dr. Dhafir as he was being debriefed
11 by someone who had inside information with respect to
12 Kurdistan and basically the individuals that the Government
13 referenced in those papers, in its papers, individuals that
14 Dr. Dhafir supposedly met and interviewed.

15 Basically, there was no meeting, there was an
16 interview of several individuals and those interviews took
17 place back in 1980, at least 20 years before the facts and
18 circumstances of this case. The individuals that were
19 referenced, the individuals that were referenced by the
20 Government as being the founder of al fader and the prime
21 minister of the Taliban is just factually in fact not the
22 case. Those people were not in that capacity, in fact the
23 individual that was referenced as being the prime minister of
24 the Taliban, in fact our research tells us that the
25 individuals were ran out of the country by the Taliban, and

1 the Government relying upon information that the Government,
2 United States Government back in 1980 was supporting and
3 sponsoring these individuals in Afghanistan in its effort to
4 run the Soviet Union out of Afghanistan, and Dr. Dhafir had
5 an interview with these individuals back in 1980 and the
6 interview on the tape, the videotape that was provided to
7 this court spoke about the humanitarian issues that were
8 going on in Afghanistan.

9 And I think that to rely upon interviews that
10 were taken in 1980 and saying that that's somehow compromised
11 by the doctor sending humanitarian aid to Iraq in the 19 --
12 late 1990s and early 2000, when you put those two together
13 seem not to make any sense, and certainly in no way create a
14 national security issue.

15 And when you look at the documentation that
16 was provided to the Court, the debriefing, basically one
17 individual was giving Dr. Dhafir information with respect to
18 individuals in Kurdistan and then there was a reference in
19 the Government papers that, well, clearly this shows that he
20 was giving moneys because there's a reference to HTN to give
21 moneys to Islamic organizations, that's the distinction that
22 we were hoping that the Government would in fact make on the
23 paper because in one sense they were arguing he was giving
24 moneys to Islamic groups but when you translated the document
25 from its Arabic language to English, it says Islamic

1 organization, the Islamic group that they were talking about
2 was in fact a group at some point, may have been a group out
3 of Egypt that the doctor never had any involvement with. He
4 had, in reference to the notes, Jamaa Islamia, a Kurdistan
5 group. And when that group was put on the prohibitive list
6 by the United States Government, Dr. Dhafir had long been in
7 jail. So I don't see how the Court could rely upon that and
8 make a decision to give that enhancement without having
9 further information from the Government. It's their burden.

10 The Government relies on *McKeeve* and *McKeeve*
11 is a case that basically speaks to an individual sending
12 computer parts to -- into a foreign country and -- in Libya,
13 knowing full well that those computer parts were going to be
14 used for munitions purposes. *McKeeve* makes an exception for
15 humanitarian aid. The only testimony that this court
16 received, the credible testimony this court received with
17 respect to whatever Dr. Dhafir and Help the Needy was sending
18 into Iraq was for humanitarian purposes. *McKeeve* makes an
19 exception for humanitarian purposes.

20 For those reasons, we object to the
21 enhancement and we think that the information that was
22 provided by the Government was wholly misleading. In fact,
23 as we get to pointing out some of the misleading information
24 that the Government gave to the Court in its sentencing
25 memorandum, some of them are minor and innocuous but they're

1 misleading and erroneous nonetheless, and as I read the
2 sentencing memorandum about -- that the Government submitted,
3 it's like the facts be damned, we don't care what the true
4 facts are, we're just going to put it here to support our
5 argument.

6 They started off by saying Dr. Dhafir came to
7 the United States in 1974. Well, the probation report and
8 all the documentation that the Government has on Dr. Dhafir
9 showed that he came here in 1972. Then, it gets worse where
10 they speak about, Waleed Smari testified that Dr. Dhafir
11 requested him to go to visit someone in Iraq. That's not the
12 case at all. Waleed Smari testified that he was in the area
13 and Dr. Dhafir said, well, if you're there, see this
14 particular individual.

15 But I want to speak more specifically to
16 glaring misstatements, total disregard for the facts that the
17 Government put in its sentencing memorandum. One, they said
18 that on Page 12, regarding Colleen Williams, they said that
19 when his answers, as being Dr. Dhafir, "When his answers were
20 vague and inconsistent and when they were contradicted by
21 certain underlying documents and by Rafil Dhafir's answers to
22 the same questions in her meeting with him, she withdrew from
23 the work and sent the draft forms to Dhafir's -- to
24 Mr. Hatfield."

25 The Court knows that that's not in fact the

1 case. Miss Williams told us in testimony that because the
2 Government cornered her and waved the flag for some two or
3 three days with her, she decided at that point in time that
4 she had no intention to going further with the case. In fact
5 she said that when she met with Dr. Dhafir, she wasn't even
6 paying attention to what he said because she had made up her
7 mind that she was going to withdraw. And to put this in the
8 paper, to urge your Honor to sentence Dr. Dhafir, it just, it
9 just -- it's just patently unfair and intellectually
10 dishonest.

11 When you go further, it mentioned that, well,
12 this investigation of Dr. Dhafir as it relates to Medicare,
13 in conducting physical surveillance of Dr. Dhafir's house
14 during May 2000, investigators noticed that Rafil Dhafir
15 seldom went to his medical practice. He spent several hours
16 at his office on Monday, Tuesday, Wednesday, but did not go
17 to his office on Thursdays and Fridays. Because his income
18 tax returns revealed substantial income from the medical
19 practice, investigators became suspicious of his billing
20 practice with Medicare. You recall the testimony. They said
21 it was a fax from Laurie Evans to Mrs. Dhafir, communication
22 between those two individuals that spoke to the incident to
23 rule, and it was because of that misunderstanding with
24 respect to the incident to rule, that's how the Medicare case
25 got started.

1 Now, they submit this to your Honor, and when
2 we know full well that the documents that they gave us early
3 on, they said, in those documents, that the Medicare
4 investigation of Dr. Dhafir came as a result of FBI asking
5 Medicare to conduct the investigation because they said that
6 Dr. Dhafir was overbilling Medicare, bilking Medicare and
7 using those moneys to sponsor terrorism. Now we have this.
8 They're all over the place and it's the facts be damned, and
9 we just ask your Honor to take some of these things in
10 consideration.

11 We went through their sentencing memorandum
12 and there are 44 instances of glaring misstatements or just
13 intellectually dishonest information. One of the latter ones
14 that speaks to the issue of fine or restitution, giving the
15 information about the defendant's financial condition set
16 forth in the presentence investigation report, "We agree with
17 the probation office that defendant is in a position to pay
18 such financial obligations immediately." What's so glaring
19 about that, your Honor, is that it was only until last week
20 that we faxed over the financial affidavit. There was
21 nothing in the probation report. They just took the
22 information and make things up as they went along as they did
23 throughout the trial.

24 We are not here to relitigate the trial, but I
25 just wanted the Court, when it relies on information that is

1 being submitted by the Government, that I think the Court has
2 to look at it with a very jaundiced eye. As it relates to
3 the issue with respect to enhancement of national security,
4 we urge your Honor to consider our letter dated October 4th,
5 2005.

6 THE COURT: I read it.

7 MR. CANNICK: We ask your Honor to consider
8 the testimony that was heard at trial, and consider the fact
9 that the information in those documents that were cited by
10 the Government does not stand for the proposition, and some
11 of the physical evidence that they ask your Honor to consider
12 deals with interviews taken by Dr. Dhafir in 1980, of
13 individuals who were fighting and being sponsored by the
14 United States Government to rid the Soviet Union, rid
15 Afghanistan of the Soviet Union. And again, our issue with
16 respect to abuse of trust, we rely on our earlier papers.

17 THE COURT: Mr. Olmsted, would you like to
18 respond.

19 MR. OLMSTED: I'll respond very briefly unless
20 you have more questions, then of course I'll answer any
21 questions you would want.

22 With respect to Colleen Williams, and I won't
23 belabor the record on this, I hope the Court --

24 THE COURT: I recall her testimony.

25 MR. OLMSTED: Is that she was stuck with Rafil

1 Dhafir longer than she would have otherwise done because she
2 was concerned that the Government was overreaching and so she
3 said, I gave them more breaks than normal, but it was when he
4 pulled out the file cabinet that showed years and years of
5 operation where they had told her specifically they were a
6 new organization that she began to feel uncomfortable and
7 withdrew. That's the basis of our representations in the
8 sentencing memorandum.

9 Let me speak briefly about the enhancement for
10 national security. The two paragraphs that we cite on the
11 McKeeve case I think resolve this issue. It says, "The
12 embargo was an exercise of executive power, designed to deal
13 with an extraordinary threat to national security." In this
14 case, your Honor, the President specifically found in 1990
15 that the government, the actions and policies of the
16 government of Iraq constituted an unusual and extraordinary
17 threat to national security. And that was endorsed every six
18 months following that, either by a report or a specific
19 finding. I appreciate that a lot of the public thinks of
20 this as a kind of a Republican thing, but most of the
21 findings ever found under sanctions were signed by President
22 Clinton. This wasn't a Democrat thing, this wasn't a
23 Republican thing, it was a national security program that
24 was -- that persisted.

25 There are problems with every sanctions

1 program, but the sanctions programs are an alternative to
2 war, and therefore, they are essential to the national
3 security of the United States, and the decision to violate
4 those sanctions violates a national security control.

5 In the *McKeeve* case the court says, in
6 essence, that ends the matter. As we read it, the
7 enhancement applies to any offense that involves a shipment
8 or proposed shipment that offends the embargo, whether or not
9 the goods shipped are actually intended for some innocent
10 use, and the *Min* case says the same. I believe that you can
11 rely upon your recollection of the facts that were adduced at
12 trial to conclude that Rafil Dhafir was not sending
13 humanitarian aid into Iraq, he was sending money. And much
14 of that money wasn't even designed to purchase humanitarian
15 aid, some of it was. But the fact is, the restriction on
16 money going into a country like Iraq is absolute, and the
17 reason is that once it gets there, it is fungible and can be
18 used for any purpose.

19 The President, all the Presidents involved in
20 this case believed that we had to have an unwavering foreign
21 policy, absolute and controlling with respect to Iraq, both
22 with respect to the government of Saddam Hussein and with
23 respect to the factions that would succeed Saddam Hussein
24 once he left power. And so they decided as a matter of
25 national policy, as a matter of national security policy to

1 invoke these sanctions. And the conspiracy to violate those
2 is a conspiracy to violate a national security control as a
3 matter of law, and in this case as a matter of fact.

4 And we'll also remind you that you have
5 resolved this issue on two further occasions with respect to
6 two individuals, Osameh Al Wahaidy and Ayman Jarwan, both of
7 whom we concluded believed that they were providing nothing
8 but humanitarian aid, and it would be a perversion if Rafil
9 Dhafir were to get the benefit of a -- or would not get this
10 enhancement, when he knew the truth, given that those two
11 individuals had to face that enhancement with aid or not. If
12 you have --

13 THE COURT: Well, just because I did that with
14 the other two doesn't mean I can't change my mind if I feel I
15 erred, but I don't feel I erred, I think I was correct in
16 that and you may have an exception, Mr. Cannick.

17 MR. CANNICK: Thank you, your Honor. I just
18 want to correct the record with one thing that Mr. Olmsted
19 said. He said with respect to Colleen Williams that she said
20 she withdrew when Dr. Dhafir opened a drawer and she saw
21 these articles or these items in the drawer. If the Court
22 recalls that interview that Dr. Dhafir had with Colleen
23 Williams was at Colleen Williams' office, she was not in
24 Dr. Dhafir's office and Dr. Dhafir never opened any drawer,
25 that was testimony of Ayman Jarwan.

1 MR. OLMSTED: Right, it was Ayman Jarwan.

2 THE COURT: All right. Now we're ready on the
3 issue of downward departures. Defense, do you wish to be
4 heard on that? I've read your papers.

5 MR. CANNICK: Your Honor, you've read our
6 papers on it, we're not going to belabor the record, we just
7 believe that given the facts and the circumstances of this
8 case, this case is wholly outside of the heartland of cases
9 that this court deals with on a day-to-day basis. I think
10 that when I make my final comments to you with respect to
11 Dr. Dhafir in terms of asking you or at least speak to you
12 about the sentencing options, I will get further into it, but
13 I think this case is out of the heartland. We cited a number
14 of circumstances where, for charitable purposes, downward
15 departure has been granted, we cited situations wherein
16 someone, facts and circumstances of the case, the criminal
17 conduct is far outweighed by the Guidelines, we'd ask you to
18 take that in consideration.

19 We'd ask you to take into consideration that
20 the law, the federal law anticipates that when someone's a
21 pretrial detainee, that he will be kept in a federal
22 facility, not like the one that Dr. Dhafir was kept in, and I
23 think that this court is keenly aware of the conditions that
24 Dr. Dhafir and his attorneys were confronted with in terms of
25 preparing for this case on a going-forward basis. We also

1 point out the fact that he has lost his medical license, his
2 standing in the community, these are all items that the
3 courts have considered and granted downward departure on.
4 The Court has received our papers, since August 15th, you've
5 indicated you've read them, so we're certainly not going to
6 belabor the record here.

7 THE COURT: Thank you.

8 MR. COHEN: Your Honor, may I just take a
9 moment to confer with Mr. Cannick.

10 THE COURT: Yes.

11 (Pause in Proceedings.)

12 MR. CANNICK: And your Honor, Mr. Cohen just
13 pointed out something that we did in fact discuss. That if
14 this court was to give the enhancement with respect to the
15 national security issue, then we would ask for a downward
16 departure because of that, because this case is so much
17 unlike the *McKeeve* case. In that case, McKeeve was aware
18 that the computer parts were going to a munition facility, he
19 understood and was aware because there were conversations had
20 with he and the other individuals throughout him sending
21 these items there that he fully appreciated his conduct, knew
22 exactly what was going on. That's not the situation here.

23 Despite whatever the Government is saying, the
24 only thing that we know that was going on is that Dr. Dhafir
25 sent moneys to procure meat for the adahi program and to feed

1 other individuals and to provide medicine, clothe, food, I
2 think the Court is well aware of their efforts to get
3 clothing, the container into Iraq and that did go about and I
4 would ask the Court to consider granting the downward
5 departure to offset any enhancement that the Court might
6 consider with respect to national security issues.

7 THE COURT: Mr. Olmsted.

8 MR. OLMSTED: Your Honor, obviously we oppose
9 the downward departure on all these grounds. We do not
10 believe that this case does fall outside the heartland. We
11 believe that the shipment of money into Iraq, I believe you
12 can recall the reports are that Iyad sent back, Mustafa, the
13 two money couriers sent back to Rafil Dhafir to describe how
14 they spent the money, does not match the humanitarian
15 purposes that we are now hearing were the only purpose for
16 the money being sent into Iraq. That's simply not the facts.

17 The only matter that they address that we have
18 not already addressed on the record because I'll rely on our
19 record otherwise, is the location of the defendant's pretrial
20 detention. As you may know, we had suggested that the
21 defendant could be moved to several other facilities to be
22 convenient either to his lawyer by moving to a federal
23 facility nearer to New York City or to another facility other
24 than Jamesville in this area, and it was the defendant's
25 choice to not seek those transfers. I believe because -- for

1 whatever reason, but I just wanted that to be on the record.
2 That he was not held in Jamesville because the Government
3 required him to be in Jamesville, he was held in Jamesville
4 because he was required to be held somewhere and that
5 Jamesville was the place chosen by the defense to stay.

6 Other than that, unless you have questions
7 about specific issues on which you are considering a downward
8 departure, I'll rely upon the papers that we've filed
9 already.

10 MR. CANNICK: Just want to correct the record,
11 your Honor, maybe I came in here one day and I was fast
12 asleep and I asked the Court to keep Dr. Dhafir at Jamesville
13 and maybe I asked for that, I don't have any recollection of
14 that whatsoever. I don't think that there's anything in the
15 record anywhere that would ever support that. Even numerous
16 letters that I sent to this court regarding what was going on
17 with respect to the facility, we complained loud and we
18 complained early.

19 THE COURT: And I think we accommodated you
20 pretty well, I think we -- I tried.

21 MR. CANNICK: With what you had.

22 THE COURT: With what I had.

23 MR. CANNICK: But we didn't ask for him --
24 Mr. Olmsted just said I asked for him to be at Jamesville,
25 no, we said that the situation at the Justice Center and he

1 was summarily taken from the Justice Center, so -- but I
2 think, your Honor, the record and the numerous letters that I
3 sent to the Court would bear us out, I'm not going to belabor
4 this.

5 THE COURT: Just one second, please.

6 (Pause in Proceedings.)

7 THE COURT: Okay. I'm ready to impose the
8 sentence. Government, do you move sentence at this time?

9 MR. OLMSTED: Yes, we do, your Honor.

10 THE COURT: You wish to be heard?

11 MR. OLMSTED: Yes, we do, your Honor. We'll
12 be brief because the papers that were submitted in
13 anticipation of sentencing have been voluminous and I believe
14 provide you adequate information to impose a sentence. I
15 would like to make a couple points simply for the record, and
16 also because I believe that they bear keeping in mind during
17 the imposition of sentence.

18 This case is in several respects an unusual
19 case but in one major respect it is a normal case and that
20 is, it was built on the evidence fact by fact, that's why it
21 took so long to try this case.

22 There has been some public sentiment, we
23 believe not shared in this case that we have targeted Rafil
24 Dhafir for prosecution because of his religious beliefs.
25 That is not the case. We have litigated that pretrial, I

1 believe that as you watched the evidence unfold during trial,
2 that concern should have evaporated. We have not prosecuted
3 this case because of who the defendant is but because of what
4 he has done.

5 And what has he done? We believe he has lied
6 and we believe we have proved and the jury verdict confirms
7 that he lied to his donors, to the United States, to his
8 government, which is the United States government. He's
9 convicted of making false statements to the IRS, to the INS,
10 and to the Department of Human Services -- Health and Human
11 Services. He's lied to his banks and we believe he's lied to
12 his friends. He pretended, as you know, to be Maher Zagha,
13 Maetham Alazawy, Muhammed Harairi, Ralph Shafir, and Osameh
14 Al Wahaidy. His application for a visa to the Saudi Arabian
15 government, he signed in the name of Ralph Shafir. And the
16 videotape, if you recall, of the meeting in Washington, D.C.
17 shows him and the other two trustees laughing at how they had
18 misled the IRS on who they were. I believe his quotation is,
19 "They'll be pulling out their hair trying to find us."

20 The testimony also showed that when anybody
21 ever questioned him about what he was doing, he beat them
22 down, insisting that they simply do what he asked.

23 He did when his wife told him that they were
24 misbilling Medicare and now she's convicted.

25 He told Al Wahaidy that he needed to keep his

1 name on the bank accounts and Al Wahaidy agreed because of
2 his loyalty to the doctor. And now, Al Wahaidy's been
3 convicted.

4 When Jarwan met him in the parking lot, this
5 is testimony at trial, and asked him, what happens to the
6 money when it gets to Iraq, Dhafir didn't answer, he said,
7 don't you trust me? Well, Ayman Jarwan did trust him, and
8 now Ayman Jarwan is convicted and in jail.

9 When Ahmed Ali said, I don't know if I can
10 sign this visa application because it says we're going to pay
11 him \$63,000 and I want to make sure that really happens, can
12 you send me the money, Rafil Dhafir said, yes, I'll send you
13 the money, just sign it. Ali signed it. Dhafir never sent
14 him the money, and now Ali is convicted.

15 When the New York State Charities Bureau
16 started following up on the Somali Relief organization and
17 Help the Needy, Rafil Dhafir met with Ahmed Ali and said,
18 close your charity. To tell --

19 THE COURT: Somali Relief fund.

20 MR. OLMSTED: Somali Relief fund. To tell
21 someone who is providing aid to needy Muslims that he should
22 close their charity so the government doesn't figure out what
23 Rafil Dhafir is doing with his charity money puts the lie to
24 the claim that this is being prosecuted because of Rafil
25 Dhafir's faith.

1 I appreciate that many people see his adamance
2 as religious conviction. We see it as simple arrogance.
3 Even though the sanctions in this case have been the focus of
4 most of the arguments made by the defense counsel, the mail
5 fraud and wire fraud of the donors has always been a
6 motivating force to the investigation and the prosecution.
7 Indeed it was the statute which we relied on at the beginning
8 of this case to justify why pen registers, tax exempt, tax
9 disclosure orders and such matters.

10 We have taken our lead from the donors. When
11 asked, all the donors said that they would be appalled and
12 offended and angry if the donations were used for anything
13 other than helping the needy people in Iraq. That was the
14 basis of the wire and mail fraud charges, Counts 51 to 60 on
15 which he has been convicted.

16 People who donated money at the Manlius
17 fundraiser, and you may recall we showed the videotape of
18 that fundraiser, each said when we interviewed them in
19 February of 2003 that they would feel defrauded if their
20 money did not go to the needy people in Iraq. Many of those
21 people, your Honor, are in the room today.

22 At trial, we showed through the records that
23 the money that was provided by those people at that meeting
24 was deposited into the Oneida Savings Bank account in the
25 name of Help the Needy by Rafil Dhafir and then, forging

1 Osameh Al Wahaidy's name, the money was transferred to Maher
2 Zagha's account in Jordan. And then following e-mail
3 direction from Rafil Dhafir to Maher Zagha, that money was
4 then paid out first to Haifal Abdullah who is the gentleman
5 who came down from Montreal to say he had been advanced
6 \$65,000 and he was going to use it to pay Iraqi government
7 officials on the Oil for Food program but decided since the
8 Iraqi government didn't seem like it was there for the long
9 term, he would simply take the money and live off of it in
10 Montreal. And another \$213,000 was wire transferred from --
11 by Maher Zagha at the direction of Rafil Dhafir to Saed
12 Badawi, who is the co-owner of, and the president of Salt
13 City International, a corporation here in Syracuse owned by
14 Rafil Dhafir.

15 And if you recall the visa application that
16 the defendant submitted to the Saudi Arabian government, he
17 said I was going over to meet with Saed Badawi to set up an
18 investment company. It had nothing to do with charity.

19 And so when imposing the sentence today,
20 applying the law to these facts, we ask you to keep in mind,
21 as I'm sure those donors have kept in mind, the images, the
22 tragic images of those children who needed help and to also
23 keep in mind that none of those children ever had a chance of
24 getting any of the money that those donors thought those
25 donors were giving. Unless you have further questions, I'm

1 done.

2 THE COURT: Nothing.

3 MR. OLMSTED: Thank you, your Honor.

4 THE COURT: Mr. Cannick.

5 MR. CANNICK: Your Honor, I'm going to speak
6 briefly to some of the comments that were made by Mr. Olmsted
7 because I just don't think the facts as we heard them bear
8 out what he just said, none of the moneys went to the
9 children and the children didn't stand a chance of receiving
10 it. I think that I can recall the testimony of Mr. Kolbe
11 saying, well, most of the moneys went for the adahi program
12 and that program was well documented and that was almost
13 70 percent of the moneys that the organization had, as well
14 as the other holidays where the organization sent moneys for
15 specific things.

16 Mr. Olmsted mentioned there are people in this
17 community, in this room who were in attendance at the Manlius
18 meeting and said that they felt betrayed if they knew the
19 moneys went to some source other than that. I don't recall
20 any of them testifying at trial, in fact there are witnesses
21 who the Government did in fact have testify at trial and they
22 asked the very same question of them, and those witnesses did
23 not give the statement or comment that Mr. Olmsted just made.
24 In fact, most of the discovery that we received with respect
25 to communications that supposed victims responded to the

1 Government regarding the use of the moneys, at least their
2 allegation of the use of the moneys, they were not as which
3 was just articulated by Mr. Olmsted.

4 The ones who testified here in court didn't
5 articulate that, nor did the ones who sent written
6 correspondence back in response to them. It's quite
7 contrary. In fact most of them said that they believe that
8 Dr. Dhafir, knowing who he was, used the moneys for the
9 purposes for which he asked, and the witnesses who came and
10 testified here in court said the exact same thing.

11 The Government opened up this case on that
12 theme, that Dr. Dhafir would be shown to be a manipulator and
13 a betrayer, and the people that they called and put on the
14 witness stand said everything but that. In fact in their
15 letter to your Honor, the sentencing memorandum, they said,
16 well, because these people did not come in and said that he
17 manipulated them and betrayed them that he must be some
18 Svengali of some sort, has some powers over them where they
19 couldn't realize what had happened to them.

20 THE COURT: Well, I got to say, there, his
21 wife stands convicted before me, plus several of his
22 colleagues.

23 MR. CANNICK: Yes.

24 THE COURT: And they're -- and I recall the
25 testimony. There is an allegiance to your client by Osameh

1 Al Wahaidy, Ayman Jarwan, those people, and the wife, there
2 is a strong, strong belief in him, and I think, and as it
3 stands right now, they're all convicted as result of the
4 conduct of your client.

5 MR. CANNICK: Your Honor, and what really
6 concerns me about that comment is that when the Court says
7 that, then the Court in my way of thinking is saying, well,
8 if there's such a belief, then that belief is only there
9 because of some nefarious ability of my client, not that he's
10 such a person who's lived his life --

11 THE COURT: I didn't say, I'm just saying that
12 they have a belief in him. He is a leader within his
13 community, he is looked up to, highly respected, I didn't
14 hear anybody speak in a derogatory manner about him, even the
15 ones that stand convicted of felonies.

16 MR. CANNICK: And there's probably a reason
17 for that. Because he is, because he's lived his life the way
18 that he's represented himself throughout, and these people
19 have reason to know him I think far more intimately than
20 anyone else in this courtroom, and there's probably very good
21 reason as to why that allegiance is there and that loyalty is
22 there. And I think the way that these witnesses who came in
23 and testified about what Dr. Dhafir did for them way back
24 when, before there was any Help the Needy, you remember the
25 testimony of the individual who came here to go to medical

1 school and said that he was sleeping in a car and it was
2 Dr. Dhafir who came and gave him money to help him out of his
3 situation. Witnesses after witnesses came in and testified
4 as to the good deeds of this man, well before Help the Needy.

5 THE COURT: I know that, but there's also this
6 side of it that's very bothersome to me. Your client has
7 insulated himself, he has bank accounts, instead of his name
8 being on them, they're in the name of Osameh Al Wahaidy,
9 they're in the name of Ayman Jarwan, they're in the names of
10 other people. He has insulated himself, his name shows up
11 nowhere. Even when the prosecution mentioned, I mean, when
12 he was going to go back over to Saudi Arabia, I think he used
13 Ralph Shafir as the name.

14 MR. CANNICK: A name that he used for about 20
15 years, your Honor, and your Honor, I think that aside from --

16 THE COURT: It just, it seems to me, I sat and
17 I heard the case, and I -- I'm of the opinion that he did
18 many, many good things, there's no question about that, and I
19 intend to take that into consideration when I sentence him,
20 but he's been convicted, and I heard the proof and I heard
21 the jury's verdict, and I think the evidence supported that
22 and I told you that when the motions were made.

23 MR. CANNICK: Your Honor, then given what the
24 Court has just said, I'm not going to belabor the Court's
25 time with much more, but I think when you mention that there

1 are these individuals who are close to my client, who has
2 this belief in him, I think that the Court should take into
3 consideration, there aren't many letters that were received
4 from supposed victims here, but the ones that were received,
5 if the Court reads them, these letters speak glowingly about
6 Dr. Dhafir.

7 THE COURT: I read every letter that was sent
8 to me. There were a couple letters, though, that didn't
9 speak so glowingly. He broke the hearts of some of his
10 clients, that he worked on, you recall, because they
11 questioned now whether or not he was honestly treating them
12 for the cancer that they were going through, or treating
13 their husbands, so I agree, overwhelmingly, they speak
14 glowingly of your client, there is no question about that.

15 MR. CANNICK: And your Honor, I'd just like to
16 mention two things and I'm going to sit down. You mentioned
17 that there were a couple of letters that did not speak
18 favorably of Dr. Dhafir and I have those two letters because
19 I knew that there would be some reference to them. The one
20 letter is from an individual, I'm not going to mention the
21 name but the letter basically said, we had a big loss in our
22 family, I blame Dr. Dhafir because when we needed him, he was
23 in jail, we had no medical records to fall on, and we had no
24 doctor to counsel on. Your Honor, that was pretty much
25 Dr. Dhafir's position with respect to the Medicare issue

1 here. There was no other doctor there as it relates to
2 incident to. They're saying that when we needed him, he was
3 in jail.

4 The other letter's pretty much the same, and
5 what went on is that the letter then goes on to speak about
6 Dr. Dhafir, well, we're at war now, and he did these things
7 to America, and we're a hundred percent Americans. I think
8 the other letter speaks to a misunderstanding as to what this
9 case is all about, and I think that person found themselves a
10 victim --

11 THE COURT: She is mixed up, you can tell
12 she's emotionally, she is -- it's a lengthy, lengthy letter,
13 that one. The other one, is that the one where there's five
14 children involved?

15 MR. CANNICK: This is the one that I just
16 referenced. The one that you just spoke to is of a
17 85-year-old woman who was treated by Dr. Dhafir and still was
18 alive 13, 15 years later, after she was treated with him with
19 a 50/50 chance and this letter basically says he let us down
20 because he was in jail.

21 Your Honor, I'm not going to belabor the
22 record. You have our submissions, we have reason to believe
23 that this case is outside of the heartland, we believe that
24 the Government -- well, the Court is to consider the
25 Guidelines, but *Booker*, you're supposed to consider the total

1 bent of a man, and we ask you that when you consider the
2 total bent of a man, you do what you feel is the right thing
3 to do here. Dr. Dhafir did not kill anyone, he did not maim
4 anyone, and we don't believe that he should be sentenced in
5 that fashion. If he did kill someone, he killed them out of
6 kindness, out of love, and out of trying to provide food and
7 humanitarian services for them. Thank you.

8 THE COURT: Thank you, Counsel. One second.

9 (Pause in Proceedings.)

10 THE COURT: Okay. Rafil Dhafir, is there
11 anything you would like to say, sir, before I pronounce
12 sentence?

13 MR. CANNICK: May I have one second, your
14 Honor.

15 (Pause in Proceedings.)

16 THE COURT: Mr. West, did you advise counsel
17 of your different figure on the Blue Cross Blue Shield?

18 MR. WEST: I did, Judge, I provided --

19 MR. COHEN: Your Honor, I'm sorry, Judge, may
20 we take a five-minute break in order to resolve this issue
21 with Dr. Dhafir? Thank you very much.

22 THE COURT: Five-minute break.

23 MR. CANNICK: Your Honor, before we go, am I
24 correct that the restitution issue is still open?

25 THE COURT: Well, I was going to address that,

1 I just wanted to know if the probation department has shown
2 you what their figures are, and this morning, Mr. West
3 submitted to our office and I just asked him whether you were
4 advised of that, that they have lessened from 52,000 to
5 18,000. If you want, you can submit the restitution issue on
6 papers afterwards.

7 MR. CANNICK: Your Honor, that I think would
8 be our preference, because what probation has suggested here
9 is totally at odds with the Government's own witness Nina
10 Carosella with respect to Medicare, and we submitted Nina
11 Carosella's testimony with our sentencing memorandum, and I
12 don't know if the Court recalls her testimony, but she spoke
13 about how these things had to be first backed out, and
14 probation does not in any way do any backing out, and I don't
15 think the Government is of that position when in fact its own
16 witnesses said you had to back these things out. And I think
17 that if we were to have any resolution of it, it has to be by
18 way of a submission or by hearing.

19 MR. COHEN: Or both.

20 MR. WEST: Well, Mr. Cannick continues to
21 misunderstand Miss Carosella's testimony. She explained that
22 she was not in a position to go through the calculations
23 because that was done by Special Agent Pangallo who went
24 through and explained how she backed out the claims that were
25 inappropriate to reduce the amounts that were concluded as a

1 loss. What the Medicaid folks have submitted and that
2 Excellus Blue Cross Blue Shield has submitted now provides
3 the Court with the losses which they incur for the payments
4 that weren't made by Medicaid when Dr. Dhafir was out of
5 office and his staff treated the patients. They adopted the
6 same percentage reductions that Agent Pangallo did when she
7 did her analysis and their charts and figures reflect that.
8 The figures that we submitted this morning, and the new
9 charts that I provided.

10 THE COURT: You went from 52,015.55 to
11 18,336.27 on the Excellus Blue Cross.

12 MR. WEST: That's correct, Judge.

13 THE COURT: Well --

14 MR. CANNICK: There's no misappreciation that
15 I have of Nina Carosella's testimony, you have it, it speaks
16 for itself.

17 THE COURT: Why don't I reserve then on the
18 restitution issue, we'll resolve this.

19 MR. CANNICK: Very well, your Honor. May we
20 have that 15 -- that five minutes.

21 THE COURT: Yes.

22 THE CLERK: Court stands in recess.

23 MR. COHEN: Your Honor, may we meet with the
24 doctor in the jury room?

25 THE COURT: Sure.

1 MR. COHEN: Thank you very much.

2 (Whereupon a recess was taken from 10:56 a.m.
3 to 11:05 a.m.)

4 THE COURT: Mr. Cannick, sir.

5 MR. CANNICK: Yes, your Honor. Your Honor,
6 Dr. Dhafir does have a statement he'd like to make.

7 THE COURT: Please proceed, sir.

8 THE DEFENDANT: (speaking in Arabic) Peace to
9 Allah and peace and mercy be on his prophet and all the
10 prophets after him, before him.

11 I have been incarcerated for close to a
12 thousand days and counting. And I had to endure four months
13 of trial where misrepresentation, innuendoes, and utter lies
14 were uttered and I had to endure all this as I had no way of
15 saying anything because of the structure of the system. And
16 since the trial ended eight months ago, I've been thinking on
17 what to say in this day that will explain some of the
18 ambiguities or answer some of the questions that were raised
19 even this morning just a few minutes ago, and I sat and wrote
20 down and rewrote and rerererewrote, and I ended up with a
21 document of about 50 pages that I wanted to present to this
22 court today.

23 But then last night, meeting with my lawyers,
24 they said that no one is going to have the attention span to
25 listen to all this, including the Judge, and they convinced

1 me to cut it down to about five or six pages which I
2 reluctantly did, knowing that a lot of facts are going to go
3 unnoticed, and a lot of deceiving and deceptions that were
4 shown during the trial by our accusers will go unchallenged,
5 but because, again, of the way the system was, I agreed to
6 it.

7 But then again, as the Court started this
8 morning, and hearing your comments, sir, I found that even
9 these five or six pages are not to be uttered, because it
10 seems, and I could be corrected, that the Court's mind have
11 already been set. My lawyers had advised me --

12 THE COURT: My mind is set on this, I accept
13 the jury's verdict.

14 THE DEFENDANT: Yes.

15 THE COURT: I am required to accept that
16 jury's verdict.

17 THE DEFENDANT: Yes, sir. As my lawyers have
18 pointed out to me as well as to others, is that common sense
19 has to prevail. How would one explain that someone will pay
20 \$1.4 million over the years and come up with such a
21 complicated scheme which takes a lot of effort and a lot of
22 footwork and tremendous cooperation from not one, two, three,
23 or four people, so that at the end, he will steal \$300,000.
24 It makes absolutely no sense. At least I should be given the
25 benefit of the doubt that I'm not that dumb and not that

1 stupid.

2 THE COURT: I think you graduated high school
3 at the age of 16 number 10 of 45,000 students.

4 THE DEFENDANT: 45,000, sir.

5 THE COURT: I don't think you're stupid, sir.

6 THE DEFENDANT: To come up with that scheme
7 and spend \$1.4 million to steal \$300,000 is to be dumb and
8 I'm not that dumb. By simple calculation, as my lawyers have
9 pointed out, that if the issue was to avoid taxes, I could
10 have paid, and I did. But according to the Government, that
11 I tried to avoid paying \$400,000. You are good at
12 mathematics, sir, you showed us your capability, and I'm good
13 at mathematics, too, I always scored a hundred out of a
14 hundred in the 11 years that I studied mathematics. These
15 things do not add up. I could have paid the alleged \$400,000
16 and kept a million in my pocket. I didn't have to steal that
17 \$300,000 the Government alleges. Common sense. Simple
18 common sense.

19 Apologies are in order. I first and foremost
20 apologize to my Maker for not worshipping him the way he
21 deserves and is entitled to.

22 I apologize to the Prophet, peace be upon him,
23 for not emulating him as I should have.

24 I apologize to my wife, who was deprived of my
25 companionship, and I of hers, because I was so entrenched in

1 helping the needy. I thank her for understanding and not
2 complaining. I hope I will be able to make it up to her, if
3 not in this life, then surely in the next.

4 I apologize to the Iraqi people, those who
5 were needy, for not helping more, but my hands were tied, and
6 now I'm incarcerated.

7 I apologize to my Muslim brothers and sisters
8 for not spending enough time helping them with their fears,
9 and to them, I wish I can turn back and look them in the eye
10 and talk to them, but I know the Marshals will not allow me,
11 and tell them don't ever believe that I would let you down or
12 that I would lie to you or that I will misappropriate the
13 funds that you trusted me with. Not then, not now, not ever.
14 It is not in me, and that is not me. Whatever else people
15 from our accusers' side want to say, that's their problem.
16 But the truth stands as it is.

17 I apologize also to those who have faith in
18 me, supported me in all forms and avenues and who believe in
19 my innocence. I apologize to them that I failed to convince
20 the decision makers of my innocence, as I don't know how to
21 lie and twist the facts, and I wish that what people believe
22 on the outside is the same as what had been transpired inside
23 this court. Thank you.

24 THE COURT: All right. Going to take about a
25 three-minute recess, please.

1 THE CLERK: Court stands in recess.

2 (Whereupon a recess was taken from 11:14 a.m.
3 to 11:16 a.m.)

4 THE COURT: Okay. Rafil A. Dhafir, the Court
5 has reviewed and considered all pertinent information
6 including, but not limited to, the presentence investigation
7 report, the addenda, the submissions by counsel, I've
8 considered the factors outlined in 18 U.S.C. 3553(a) and the
9 Sentencing Guidelines, and I adopt the factual information
10 contained in the presentence report and the addenda.

11 Now the Court applies the six-level
12 enhancement to the money laundering counts under 2S1.1(b)(1),
13 for promoting a national security offense. Likewise, the
14 Court finds that the Level 26 under 2M5.1(a)(1) is
15 appropriate on Count 1. The Court bases this conclusion on
16 the trial testimony and the jury verdicts of guilt on counts
17 relating to IEEPA violations. The Court does not rely on the
18 notes and the other documents not admitted into evidence to
19 which defendant objects.

20 Now the Court finds the total offense level to
21 be 41, the criminal history category is I, and the guideline
22 imprisonment range is 324 to 405 months.

23 The Court has considered the relevant factors
24 in Section 5K2.0 of the Sentencing Guidelines, and finds that
25 this case is not outside the heartland of cases. The Court

1 denies defendant's motion for a downward departure.

2 The Court must now consider the applicable
3 guideline sentencing ranges as well as the other factors that
4 are listed in 18 U.S.C. 3553(a). These factors include the
5 pertinent Sentencing Commission policy statements, the need
6 to avoid unwarranted sentencing disparities, and the need to
7 provide restitution to victims as well as the requirement
8 that judges impose sentences that reflect the seriousness of
9 the offense, promote respect for the law, provide just
10 punishment, and afford adequate deterrence and protect the
11 public. Also, the Court shall impose a sentence sufficient,
12 but not greater than necessary, to comply with the above
13 stated purposes of 3553(a).

14 In considering the 3553(a) factors, the Court
15 recognizes that this defendant has never been involved with
16 the criminal justice system in his 57 years. Additionally,
17 the Court cannot overlook the highly favorable conduct of the
18 defendant in the past. I have received many, many letters,
19 overwhelming majority of which praise the defendant for his
20 care to his patients and to their families.

21 The defendant has had a very positive
22 influence within the Muslim community of Central New York.
23 He has not only been a leader within the Muslim community,
24 but he was the moving force behind the building of the mosque
25 in Syracuse. It is unquestioned that he gave guidance,

1 shelter, clothing, jobs, and assisted in furthering the
2 education of several newly arrived immigrants from the Middle
3 East.

4 The Court is not unmindful of the fact that
5 this defendant now stands before the Court stripped of his
6 stature within the community, never to return to his practice
7 of medicine, and knowing that his finances and assets are
8 subject to forfeiture by the Government.

9 As such, it is the opinion of this court that
10 a term of imprisonment of 27 to 30 -- nearly 34 years is not
11 necessary to carry out the purposes of 3553(a). Taking into
12 account all the required factors, the Court finds that the
13 purposes of 3553(a) are satisfied by a sentence below that
14 recommended by the Guidelines.

15 Accordingly, upon your conviction by jury
16 trial of Counts 1, 2, and 4 through 60 of the fourth
17 superseding indictment, it is the judgment of this court that
18 you are hereby committed to the custody of the Bureau of
19 Prisons to be imprisoned for a term of 264 months. This
20 consists of the following: Terms of 240 months as to each of
21 Counts 2, 4 through 14, and Counts 53 through 60; terms of
22 120 months as to each of Counts 24 through 49; terms of 60
23 months as to each of Counts 1, 15, 17 through 23, and Counts
24 50 through 52; and a term of 36 months as to Count 16.

25 The terms on each of Counts 2, Counts 4

1 through 14, Counts 16 through 49, and Counts 51 through 60
2 shall all be served concurrently with each other.

3 The terms on each of Counts 1, 15, and 50
4 shall be served concurrently with each other and, on each of
5 which, 24 months shall be served consecutively to the 20-year
6 terms imposed on Count 2, Counts 4 through 14, and Counts 53
7 through 60, for a total term of imprisonment of 264 months.

8 The Court reserves decision on the issue of
9 restitution. The Court will consider any submissions
10 received on this issue on or before November the 11th, 2005.

11 Upon release from imprisonment, you shall be
12 placed on supervised release for a term of three years. This
13 consists of a term of three years on Counts 1, 2, 4 through
14 15, and Counts 17 through 60, and a term of one year on
15 Count 16, all such terms, again, to run concurrently.

16 While you are on supervised release, you shall
17 not commit another federal, state, or local crime, and you
18 shall comply with the standard conditions that have been
19 adopted by this court, and you shall comply with the
20 following special conditions:

21 One, you shall provide the probation officer
22 with access to any requested financial information;

23 And secondly, the Court has reliable
24 information which indicates you pose a low risk of substance
25 abuse, so the mandatory drug testing in your case is -- that

1 condition is suspended.

2 It is further ordered you shall pay to the
3 United States a special assessment of \$100 on each count for
4 a total of \$5,900 which is due immediately.

5 So you are remanded at this time to the
6 custody of the United States Marshal in accordance with the
7 terms of this sentence.

8 Now both parties do have the right to appeal
9 this verdict and sentence, in certain limited circumstances.
10 You are advised to consult with your attorneys to determine
11 whether or not appeal is warranted. Any appeal must be filed
12 within 10 days of this sentence. Mr. Cannick, will you
13 assist him in that regard?

14 MR. CANNICK: Yes, your Honor, we will file
15 the necessary papers.

16 THE COURT: All right. That concludes this
17 matter. Good luck to you, sir.

18 MR. CANNICK: Your Honor.

19 THE COURT: Yes.

20 MR. CANNICK: As the probation report
21 indicates, Dr. Dhafir has no family other than Mrs. Dhafir in
22 the Central New York area, community, Muslim community.

23 THE COURT: I'm going to make the
24 recommendation to the Bureau of Prisons that they do house
25 him in the closest facility to his home.

1 MR. CANNICK: Yes. And your Honor, hopefully
2 they would view that as the Otisville facility, we know
3 that --

4 THE COURT: Otisville?

5 MR. CANNICK: Yes.

6 THE COURT: As opposed to Lake Placid?

7 MR. CANNICK: Lake Placid in terms of
8 Mrs. Dhafir being able to drive there, from my experience in
9 driving there --

10 THE COURT: Easier ride, I understand.

11 MR. CANNICK: -- more dangerous ride.

12 THE COURT: I will recommend to BOP that they
13 house your client at Otisville.

14 MR. CANNICK: Thank you very much.

15 MR. OLMSTED: Your Honor, I just have a
16 question, and I'm not asking you to rethink it, but did you
17 impose a fine or did you find that no fine was necessary?

18 THE COURT: In regards to a fine, I find a
19 fine isn't warranted in light of the financial situation of
20 the defendant, and also interest on the judgment is suspended
21 in this case. Thank you for pointing that out to me.

22 MR. OLMSTED: I have one more thing for the
23 record, your Honor, if I may. It was our intention had
24 restitution been ordered today to be put into a final
25 judgment, that we would dismiss the forfeiture and the

1 remaining counts against Help the Needy and Help the Needy
2 Endowment, Inc. and we will do so once the judgment is filed
3 in this case, without any further argument or presentation.
4 As you know, Help the Needy and Help the Needy Endowment,
5 Inc. have been subsumed by the New York State Attorney
6 General's Charities Bureau and so they have no real corporate
7 existence anymore. The remaining charges will be dismissed
8 as soon as the judgment -- we will seek to dismiss it.

9 THE COURT: All right.

10 MR. OLMSTED: Other than that, we're done.

11 THE COURT: Thank you.

12 THE CLERK: Court stands adjourned.

13 (Court Adjourned, 11:25 a.m.)
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C E R T I F I C A T I O N

I, JODI L. HIBBARD, RPR, CRR, CSR, Official
Court Reporter in and for the United States District Court,
Northern District of New York, DO HEREBY CERTIFY that I
attended the foregoing proceedings, took stenographic notes
of the same, and that the foregoing is a true and correct
transcript thereof.

JODI L. HIBBARD, RPR, CRR, CSR
Official U.S. Court Reporter